IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

WEDNESDAY, THE 17TH OCTOBER 2007 / 25TH ASWINA 1929

WP(C).No. 16682 of 2007(J)

PETITIONER:

K.C.AYYAPPPAN, S/O.CHAMI, RESIDING AT KOTTAYAMPADOM, PO AZHIYANNUR, KADAMBAZHIPURAM, PALAKKAD.

BY ADV. SRI.V.CHITAMBARESH,
SRI.T.C.SURESH MENON,
SRI.JIBU P THOMAS.

RESPONDENTS:
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1. **THE ADDITIONAL DISTRICT MAGISTRATE, PALAKKAD.**
2. **THE ASSISTANT EXECUTIVE ENGINEER, ELECTRICAL SUB DIVISION, KERALA STATE ELECTRICITY BOARD, KONGAD, PALAKKAD.**
3. **THE KADAMBAZHIPURAM GRAMA PANCHAYATH, REPRESENTED BY ITS SPECIAL GRADE SECRETARY, KADAMBAZHIPURAM P.O., PALAKKAD-678 633.**
4. **KUNJU THARAKAN, RESIDING AT KOTTAYAMPADOM, P.O.AZHIYANNUR, KADAMBAZHIPURAM, PALAKKAD.**

BY GOVERNMENT PLEADER SMT. SMITHA SUKUMAR FOR R1,
ADV. SRI.SATHISH NINAN FOR R4,
ADV. SRI. T.R. RAJAN FOR R3,
ADV. SRI. P.P. THAJUDEEN FOR R2,
ADV. SRI.SANTHOSH MATHEW,
ADV. SRI.MANSOOR.B.H.,
ADV. SRI.K.HARIDASAN (PATTAMBI)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17/10/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.16682/2007-J:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE CERTIFICATE ISSUED BY THE PRESIDENT OF KADAMBAZHIPURAM GRAMA PANCHAYATH DTD. 26/12/06.

EXT.P.2: COPY OF THE CERTIFICATE ISSUED BY THE SECRETARY OF KADAMBAZHIPURAM GRAMA PANCHAYATH DTD. 06/03/07.

EXT.P.3: COPY OF THE LETTER ISSUED BY THE DISTRICT COLLECTOR, PALAKKAD TO THE R.2. DTD. 17/01/2007.

EXT.P.4: COPY OF THE LETTER ISSUED BY THE R.2. DTD. 13/02/2007.

RESPONDENT'S EXHIBITS:

EXT. R4.A: COPY OF THE JUDGMENT IN O.S. NO. 258/2000 DTD. 11/02/2004 OF THE MUNSIFF'S COURT, OTTAPALAM.

EXT.R4.B: COPY OF THE COMPLAINT DTD. 10/10/2006 SUBMITTED BEFORE THE R.2.

EXT.R4.C: COPY OF THE COMPLAINT DTD. 23/12/2006 SUBMITTED BEFORE THE R.2.

//TRUE COPY//

prv.

Thottathil B. Radhakrishnan, J.

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W.P.(C)No. 16682 of 2007

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Dated this the 17th day of October, 2007.

JUDGMENT

This writ petition is filed seeking a direction to the second respondent Assistant Executive Engineer of the Electricity Board to move the first respondent for permission to draw and energise the electric line for the purpose of the petitioner. Obviously therefore, the petitioner was well aware that the drawal of the line could have been had only with the permission of the Additional District Magistrate. The writ petition also discloses that there were apparent obstructions on the basis of some disputed title.

2. However, it was stated in the synopsis of the writ petition that the electricity posts have been erected and the lines have also been drawn along the road owing to dispute of title over the road. This essentially invited the interim

order dated 6-6-2007 whereby the second respondent was directed to energise the line and give supply to the petitioner and other beneficiaries within one week from the date of production of a copy of that order.

3. The contesting fourth respondent entered appearance and placed on record a counter affidavit and different documents, including Exts.R4(b) and (c), which showed that way back on 10-10-2006 and 23-12-2006, the second respondent has received written objections of the fourth respondent regarding the drawal of line. This means that in terms of Sections 10 and 16 of the Indian Telegraph Act, 1885, hereinafter referred to as the “Act”, which governs the situation, the second respondent was duty bound to draw the line only after such obstruction is removed by the ADM under statutory orders.

4. In the wake of the counter affidavit of the fourth

respondent, the order dated 25-9-2007 was issued calling upon the second respondent to respond to the stand of the fourth respondent. The second respondent has accordingly placed on record a counter affidavit stating that the objections of the fourth respondent were received, but the ADM was not moved because the Panchayat had taken the stand that the pathway is a public pathway. However, a counter affidavit of the second respondent does not place on record any certificate or permission having been issued by the Panchayat, which is a local authority, in terms of clause (c) among the provisos to Section 10 of the Act. I may also immediately notice that the fourth respondent had to sue one Baladeyagupthan in Ext.R4(a) suit, who, going by the pleadings, as recorded in that judgment, was a member of the Panchayat. The civil court had issued a mandatory injunction against that person to restore the damage done to the property of the petitioner after holding that there is no public way. I may also hasten to add that I have noticed

that the Panchayat was not a party to that suit. But, it is not the legal effect of that judgment that matters.

5. As of now, the line has already been drawn. It has been energised following the interim order. The writ petitioner is enjoying the supply. He had not sought for any direction before this Court other than to compel the second respondent to refer the issue before the first respondent.

6. Having regard to the aforesaid fact situations, ends of justice require that the obstruction raised by the fourth respondent, as per Exts.R4(b) and (c), have to be considered by the ADM, in accordance with the statutory provisions. Hence, it is ordered that the second respondent shall act on Exts.R4(b) and (c) and make appropriate application before the ADM, who shall, in turn, implead the Panchayat also as additional respondent in the proceedings and decide on the obstructions. If the ADM ultimately

concludes that the line ought not to have been drawn in the alignment in which it is now placed, it has to be shifted to such position as may be decided with the views of the second respondent as the Engineer in charge of the work and of the ADM, as the exercising authority under Section 16 of the Act. Such shifting shall be done at the expense of the Electricity Board. The ADM shall dispose of the matter finally within a period of four months from the date of receipt of a copy of this judgment and if the decision of the ADM contains any direction to the Board authorities, the second respondent shall ensure that those directions are complied with within a period of one month.

Writ petition is disposed of in the above terms.

Thottathil B.Radhakrishnan,
Judge.

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